

ORIGINAL

Decision No. 19376

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of the San Joaquin & Kings River Canal & Irrigation Company, Incorporated, a corporation, and San Joaquin River Water Storage District, a water storage district organized pursuant to the Water Storage District Act of the State of California, for an order authorizing the transfer and sale of the property.

Application No. 13778.

J.E. Wooley, for San Joaquin & Kings River Canal & Irrigation Company, Incorporated.

Milton T. Farmer, for San Joaquin River Water Storage District.

Stephen W. Downey, for consumers of canal company.

Fred B. Wood, for James J. Stevinson, a corporation.

LOUTTIT, COMMISSIONER:

O P I N I O N

This is a proceeding in which the San Joaquin & Kings River Canal & Irrigation Company, a corporation, engaged in the public utility business of distributing and selling water for irrigation and for domestic purposes in Fresno, Merced and Stanislaus Counties, asks for authority to transfer its entire properties, including water rights, (which properties are more particularly described in Exhibits "A" and "B" and the location of which are shown on map marked Exhibit "C" and attached to the petition on file herein) to San Joaquin Water Storage District, a public corporation, which joins in the application.

The application, so far as it relates to transfer of the public utility properties, alleges in effect that all of the lands now served by the canal company are included within the boundaries of the district, except approximately 58,280 acres; that the district has completed plans now ready for submission to the State Engineer, providing for the comprehensive development of water for storage, generation of power, irrigation, and for the installation of a drainage system within the district, a part of which project embraces the purchase and use of the water rights, canals and other appurtenant structures of this canal company; that the company has a prior right, subject to certain intervening rights, to divert 1,360 second feet of water from the San Joaquin River, which has heretofore by the company been devoted in part to public use, that portion of the water right devoted to public use being termed and designated as the "crop land" water right and that part, secondary thereto in priority, devoted to the private use of Miller & Lux, Incorporated, designated and termed the "grass land" water right; that the original cost of the company's physical properties and water rights is \$1,550,613.46; that the present value of the physical properties is \$2,500,100.00, and of the water right designated as "crop land" water right, belonging to the company, \$1,900,000.00, making a total of \$4,400,100.00; that the present value of the "grass land" water right is the sum of \$1,767,300.00, which sum the storage district proposes to pay directly to Miller & Lux, Incorporated, for the acquisition by the storage district of the "grass land" water right.

Formal protest against the approval of the transfer was made by many of the consumers served by the canal company upon the following grounds: That the acquisition of this system

is neither necessary nor essential to the future functioning of the storage district; that the consumers will be forced to pay more for water under the present proposed district plan than a reasonable rate under public utility operation; that the prices, which the district has agreed to pay for these properties, particularly for the water rights, are so exorbitant that, when the entire costs thereof are assessed against the present consumers' land according to the benefits, as required under the "Storage District Act", said consumers will be unable financially to stand the burden; that the agreed purchase price is not based upon proper valuation of the elements of property, but is a negotiated figure considerably in excess of any fair and true value of said property; that the voting power in the water storage district is based upon the assessed valuation and ownerships of land included therein and that by reason of its vast land holdings Miller & Lux, Incorporated, dominated the election within the district, and the individual land-owners, who are consumers of this utility, to all practical purposes, have had no voice whatsoever in the policies or action of the Board of Directors of the district and no power to prevent this request of the district for authority to purchase the property.

Protest upon practically identical grounds was also filed by James J. Stevinson, a corporation, but was subsequently withdrawn.

Public hearings in the matter were held in Fresno, Los Banos and San Francisco after all interested parties had been notified and given an opportunity to be heard. The matter was taken under submission and is now ready for decision.

The grounds of protest direct themselves, with the exception hereinafter noted and commented upon, to the policy of the law expressed in the Water Storage District Act and to the possibility of administration in the future by the duly constituted officers of the district to the detriment of these particular protesting consumers. Under this head may be classed all of the grounds of protest of the objecting consumers with the exception of the protest on the ground that, by reason of its vast land holdings, Miller & Lux, Incorporated, dominated the election within the district, and these consumers have had no voice whatever in the affairs of the district and that the proposed sale contract has been entered into between the corporation controlled by Miller & Lux, Incorporated, and Directors of the water storage district, a majority of whom have been elected by Miller & Lux, Incorporated, and were Miller & Lux representatives on the Board of the district and, therefore, the contract has not received that independent and fair consideration by Directors uncontrolled by Miller & Lux, Incorporated, which it should have on behalf of the land-owners within the district. However, it appears from the evidence that at a time when a previous report was made to the State Engineer for his consideration as to whether the plan proposed in the report submitted to him for consideration was a feasible one, this same objection was there raised, and that, pursuant to said objections, all members of the Board of Directors of the storage district who were Miller & Lux representatives resigned from the Board and the State Engineer suggested four individuals, men of unquestioned integrity and good judgment who have the best interests of this community in mind, all of whom were appointed to member-

ship on the Board. In the membership of the District Board, as the same was constituted at the time the contract, approval of which is sought, and this application were presented to it for consideration, there were no members who could have been said to be the representatives of Miller & Lux, Incorporated. After a consideration of the project as it is now alleged in the petition to have been formed, these Directors of the district have determined to purchase the properties from the utility company upon the basis set forth in the contract, Exhibit "F" attached to the application.

Under the provisions of the "Water District Act", the duty is imposed and the power conferred upon the proper officials of the district to make determination as to what properties are necessary for the proper functioning of the storage district, the amount that shall be paid therefor and the manner in which the district, after the acquiring of such properties as it deems necessary, shall be operated. The district, through its proper officers, having made this determination, it but remains for the Commission to determine whether or not the utility should be permitted to sell its properties and discontinue service.

The policy of the Commission heretofore has been, in applications of this character, to see either that all consumers, which have theretofore been served by a public utility, when it is transferred to a governmental agency, are either included within the boundaries of the governmental agency or district, or, if not so included, that thereafter service be compelled by the district and protected to the consumer whose lands are excluded from the boundaries of the district.

In re Southern California Mountain Water Company, to sell etc., 1 C.R.C. 520,

The contract to purchase has received the deliberate consideration of a Board of Directors capable of giving and presumably having given to it serious consideration and this Board has exercised its power and discretion in making its determination to purchase the properties at the price agreed upon.

No reason has been shown justifying a departure from the policy heretofore established by this Commission.

It appears from the evidence received at the hearing that there is a great difference of opinion as to the quantity of water the canal company has a right to divert from the San Joaquin River. This subject of water rights has been a source of litigation between the canal company and Miller & Lux, Incorporated, owners of 80% of the capital stock of the canal company, on the one hand and owners of lands riparian to and appropriators of water from the San Joaquin River, on the other; considerable of this litigation is still pending but, to a great extent, will be eliminated by the formation of the district and the carrying out of the plans of the district, which prospective plans when completed include the purchase by the district of practically all of the claimed water rights of the parties litigant in the pending controversies.

It appears further that there is no storage available to the canal system, the water distributed being diverted directly into the distributing canals from the Mendota Dam, located below the junction of the Fresno Slough of the San Joaquin River.

The system now furnishes water for irrigation purposes to approximately 148,200 acres of land, 57,004 acres of which are owned by Miller & Lux, Incorporated; of the 57,004 acres

above mentioned 44,470 acres are the "grass lands" of Miller & Lux, Incorporated, for service to which "grass lands" the canal company now contends it acts only in the capacity of a transporting medium of the so-called "grass land" water, which, it is claimed, is the private water right of Miller & Lux, Incorporated. The system also furnishes a small amount of water for domestic and industrial purposes.

The San Joaquin Water Storage District was organized in 1924, under and by virtue of the "California Water Storage District Act" and amendments thereto. This district is the first district to be formed under the Act.

By reason of the general yearly failure of the unregulated stream flows of the San Joaquin River to provide sufficient water to meet the irrigation demands throughout the entire season and the inability of the various irrigation companies and irrigation districts, using or seeking to use waters of the San Joaquin River for their various projects, individually to finance the construction of the necessary storage facilities and to undertake any water development by reason of the endless litigation, which has heretofore prevented all such projects, the water storage district plan was adopted with the idea of including within its boundaries the lands now served by the several irrigation systems, including those within the Madera Irrigation District, together with certain areas of land not now supplied with water, and with these combined resources develop sufficient storage on the San Joaquin River to insure an adequate water supply to irrigate approximately 550,000 acres, to construct and place in operation a drainage system and in effect acquire all of the rights of the various contending parties to waters of the San Joaquin River, together

with certain water rights now claimed by Miller & Lux, Incorporated, to be owned in its capacity as a private corporation and, after joining of all these properties, to operate the district freed from most of the litigation which has for years been pending concerning the right to and ownership of conflicting claims to water.

It further appears in the evidence that the canal system has in the past and is now furnishing water for the irrigation of 12,534 acres of "crop lands" belonging to Miller & Lux, Incorporated, which, under the proposed project, is to be excluded from the boundaries of the storage district. This 12,534 acres is Item "3" on "Map Showing Lands Heretofore Irrigated By the Respective Water Rights And Acreages Of the Same", which map is marked Exhibit "A" and is so designated and referred to in contract marked Exhibit "F" and made a part of the petition of the applicants herein, the particular 12,534 acres being colored in light green on said map. It also appears that the canal system has in the past and that it is now furnishing water either as a public utility or as a transportation agency for the irrigation of the following described areas also belonging to Miller & Lux, Incorporated, and which are to be excluded from the boundaries of the district: 37,420 acres of land designated as Item "5" on said map Exhibit "A" and colored in brown thereon; 7,050 acres of land designated as Item "10" on said map Exhibit "A" and colored thereon in light blue hatched with brown.

There is also excluded from the boundaries of the district 1,276 acres of land belonging to persons other than Miller & Lux, Incorporated, which have heretofore been irrigated by the canal system, designated as Item "4" and shown on



said map "Exhibit A", being colored thereon in orange.

It appears also from the record that the system has heretofore and is now selling water for domestic and industrial uses to the City of Los Banos, to the City of Dos Palos, to the City of South Dos Palos, and is also furnishing the Southern Pacific Company at Los Banos, the Southern Pacific Company at Firebaugh, the Standard Oil Company at Los Banos and Dos Palos and the Associated Pipe Line at Brito and Silaxo, and the Golden State Milk Products Company at Los Banos with water for domestic and industrial uses.

The Commission is requested, through the attorney for the applicant water storage district, to make certain determinations with reference to matters concerning the future operation of its irrigation project. These requests, with the exceptions which we shall hereafter note, have to do with the manner in which this district shall hereafter conduct its affairs with reference to the waters, which may be procured on the consummation of the proposed purchase with reference to lands, which have theretofore been irrigated by the system and which are included within the boundaries of the district.

As stated above, with reference to these particular questions, we believe them to be matters of policy to be determined by the properly elected and qualified officers of the district and matters entirely beyond the jurisdiction of the Commission.

As stated in the case above cited, In re Southern California Mountain Water Company, 1 C.R.C. 520, the concern of the Commission is with those consumers who remain without the boundaries of the district, and, as to those questions which

affect service outside of the district, we believe the order hereinafter suggested should protect and direct continued service by the district to said consumers, unless such service is waived or good cause shown for discontinuance.

The contract which is attached to the petition, marked "Exhibit F" and made a part thereof, in substance, provides that the district binds itself on the acquisition of the properties in the petition mentioned to continue service to all consumers of the canal company, whether or not said service has been rendered within or without the boundaries of the storage district, and further provides that, with respect to those irrigation consumers whose lands are located within the boundaries of the district, service thereafter shall be rendered according to the provisions of the "Water Storage District Act", but that said lands shall be assessed for benefits and in all other respects shall be subject to the provisions of said Act and that, as to all consumers of the canal company whose lands are situated without the boundaries of the district, such obligation to continue service thereto is contingent upon said consumers paying the district all legal charges for said service. This provision of the contract is broad enough to protect each and all of the consumers of the canal company, who are, after the transfer, entitled to receive service from the system.

Miller & Lux, Incorporated, stated at the hearing, through their duly authorized representatives, that the Miller & Lux Corporation was desirous of waiving its rights to receive water from the district on 12,534 acres of "crop land", above designated as Item "3", Map "Exhibit A"; also upon the 37,420 acre tract, designated as Item "5" on Map "Exhibit A", and upon the 7,050 acre tract, designated as Item "10" on Map "Exhibit A".

Under the circumstances, the district, the properties

of the system proposed to be purchased by the district and the canal company should, after the properties have been conveyed to the district, be relieved from any obligation to serve any of the said lands, except the 1,276 acres, Item "4" on map Exhibit "A".

So that in the future there may be no question as to the identity of the lands which are either waiving or retaining rights to receive water from the district and from the irrigation system to be purchased from the canal company, there should be filed in this proceeding a description by governmental subdivisions, or other good and sufficient descriptions, of the respective areas above referred to as Items "3", "4", "5" and "10" on map Exhibit "A".

With reference to the service in the future by the district to the 1,276 acres, designated as Item "4" on map Exhibit "A" and to the domestic, commercial and/or industrial service to the City of Los Banos, the City of Dos Palos, the City of South Dos Palos and to the Southern Pacific Company at Los Banos and the Southern Pacific Company at Firebaugh, the Standard Oil Company at Los Banos, and the Standard Oil Company at Dos Palos, the Associated Pipe Line at Brito, the Associated Pipe Line at Silaxo, and the Golden State Milk Products Company at Los Banos, and their respective successors in interest, the district shall continue such service in the future from the waters authorized to be purchased to such extent as may be necessary in the future for a proper and adequate service at reasonable rates.

Under the circumstances developed by the evidence admitted in the proceeding and subject to the conditions herein-after stated, an order should be issued in the above entitled

proceeding, permitting the San Joaquin & Kings River Canal & Irrigation Company to transfer its utility properties referred to in the petition and described in the exhibits above mentioned, attached to the petition, for the sum of \$4,400,100.00.

In authorizing the transfer of this public utility property to the water storage district, it should be distinctly understood that the Commission does not thereby in any manner endorse or approve or find upon the reasonableness of the value claimed or of the reasonableness of the price which the district has agreed to pay for the physical properties and water rights of this utility. As to whether or not the project is a feasible one, considered as a whole, is a matter under the "Water Storage District Act", delegated to the Board of Directors of the district and to other public bodies and, finally, to the land-owners within the district.

Neither should the authorization by this Commission to make this transfer be considered as an approval by the Commission of any proposed contract by the district with other bodies, under which it is sought to define the water rights and the conflicting claims of any persons thereto, but should be considered solely as an authorization by this Commission to the public utility company to dispose of its properties at the price named in the petition, to-wit, the sum of \$4,400,100.00.

The following form of order is suggested:

#### O R D E R

The San Joaquin & Kings River Canal & Irrigation Company, Incorporated, having made application to transfer its properties, rights and interests to San Joaquin River Water Storage District, which joins in the application, public hearings having been held thereon, the matter having been submitted and the Commission being

fully advised in the premises,

IT IS HEREBY ORDERED that San Joaquin & Kings River Canal & Irrigation Company, Incorporated, a corporation, be and it is hereby authorized to transfer, for the sum of \$4,400,100.00, to the San Joaquin River Water Storage District, a public corporation, its public utility properties, water rights and other interests as more particularly described in Exhibit "A", Exhibit "B" and Exhibit "C", attached to the application herein and by said application made a part thereof, subject, however, to the following further terms and conditions:

1. The authority herein granted shall apply only to such transfer as shall have been made on or before December 31, 1928, and a certified copy of the final instrument of conveyance shall be filed with this Commission by the San Joaquin and Kings River Canal and Irrigation Company, Incorporated, within thirty (30) days from the date upon which it is executed.
2. Within thirty (30) days from the date that said company actually relinquishes control and possession of the property herein authorized to be transferred, it shall file with this Commission a certified statement indicating the date upon which such control and possession were relinquished.
3. The consideration involved in this transfer shall not be urged upon this Commission, or any other public body, as a finding of value for rate fixing or for any purpose other than for the transfer herein.
4. Upon assuming control and possession of the properties herein authorized to be transferred, San Joaquin River Water Storage District shall immediately, and thereafter, continue in adequate and proper amounts and at reasonable rates the water service which said San Joaquin and Kings River Canal and Irrigation Company has obligated itself to furnish as a public utility to the area containing approximately 1,276 acres of land lying without the boundaries of said district and designated as Item "4" on the map marked Exhibit "A" attached to the application herein, and also domestic, commercial and/or industrial water service to the City of Los Banos, the City of Dos Palos, the City of South Dos Palos, the Southern Pacific Company at Los Banos and at Firebaugh, the Standard Oil Company at Los Banos and at Dos Palos, the Associated Pipe Line Company at

Brito and at Silaxo, the Golden State Milk Products Company at Los Banos and their respective successors in interest, and any such consumers and their successors in interest other than set forth above who may now be receiving a similar domestic, commercial and/or industrial water service from said company.

5. That, upon final completion of the transfer of the properties as herein authorized, said San Joaquin River Water Storage District may discontinue water service to the areas of land now owned by Miller & Lux, Incorporated, and more particularly described in the exhibits attached to the application herein as follows:
  - (a) Area containing 12,534 acres, more or less, and designated as Item "3" on map marked Exhibit "A".
  - (b) Area containing 37,420 acres, more or less, and designated as Item "5" on map marked Exhibit "A".
  - (c) Area containing 7,050 acres, more or less, and designated as Item "10" on map marked Exhibit "A".
6. That, within sixty (60) days from the date of this Order, said San Joaquin and Kings River Canal and Irrigation Company shall file with this Commission a description, by governmental subdivision, or by metes and bounds, or by other good and sufficient legal description, of each of the areas of land referred to in the Order herein as Item "4", Item "3", Item "5" and Item "10" on said map marked Exhibit "A".
7. That, upon final completion of the transfer of the properties, rights and interests of this utility in full compliance with the terms and conditions of the Order herein, said San Joaquin and Kings River Canal and Irrigation Company and its said properties, rights and interests shall thereupon and thereby stand relieved of all public utility obligations and liabilities heretofore incurred in connection therewith.

For all other purposes, the authority herein granted

shall become effective twenty (20) days from and after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17<sup>th</sup> day of February, 1928.

*f*

Leon Whitell  
Ch. Seaman  
Francis J. ...  
David ...  
W. J. ...  
 Commissioners.